

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

WEBSTER ODELL ANDERSON, #783131 §

VS. § CIVIL ACTION NO. 6:09cv403

BRAD LIVINGSTON, ET AL. §

ORDER OF DISMISSAL

Plaintiff Webster Odell Anderson, an inmate confined at the Beto Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the lawsuit should be dismissed by the two year statute of limitations. The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of the Plaintiff are without merit.

The Plaintiff complained about a spider bite that he received on August 26, 2006, along with the medical care he received in August and September, 2006. He did not file the lawsuit until three years later on September 3, 2009. In his objections, he appropriately noted that the limitations

deadline should be tolled during the pendency of state administrative proceedings. *Clifford v. Gibbs*, 298 F.3d 328, 333 (5th Cir. 2002). *See also Gartrell v. Gaylor*, 981 F.2d 254, 257-58 (5th Cir. 1993). He did not show, however, that it took him a year to exhaust his administrative remedies. Indeed, he did not submit any documentation showing how long it took him to exhaust his administrative remedies or if he even exhausted his administrative remedies before he filed the lawsuit. He has not shown that he is entitled to have the deadline tolled. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Plaintiff's civil rights complaint is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). All motions not previously ruled on are **DENIED**.

So ORDERED and SIGNED this 16th day of December, 2009.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE